FOR ARGUMENT (14)

No. 99-1185

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IN THE
SUPREME COURT OF THE UNITED STATES

MARK SELING,
Superintendent, Special Commitment Center,
Petitioner,

DISTRIBUTED

v.

OCT 1 ' 2000

ANDRE BRIGHAM YOUNG,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

SUPPLEMENTAL BRIEF OF RESPONDENT

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Sexually Violent Predator Act, K.S.A. 59-29a01 et seq. 1

Kansas Court Reviewed Application of 'Predator' Law; Failure to Prove Lack of Volitional Control Rendered Commitment Unconstitutional

Mr. Young is filing this supplemental brief to call to the Court's attention a new case which highlights issues presented in this case. The case was filed after Mr. Young's brief was filed herein.

The Kansas Supreme Court, in In the Matter of the Care and Treatment of Michael T. Crane, 7 P.3d 285 (No. 82,080, July 14, 2000), specifically reviewed how the Kansas "predator" law was being applied. It ruled that a commitment under the Sexually Violent Predator Act, K.S.A. 59-29a01 et seq., is unconstitutional absent a finding that the defendant suffers from a volitional impairment rendering him or her dangerous beyond his or her control. 7 P. 3d at 290. The Court relied on the majority's statements in Kansas v. Hendricks, 521 U.S. 346 (1997), limiting civil commitment to those "who suffer from a volitional impairment rendering them dangerous beyond their control." 521 U.S. at 358. 7 P. 3d at 288.

The Court did not rule on the ex post facto claim raised by Mr. Crane, but found that "the question is open" based on Justice Kennedy's concurring opinion and the dissenting opinion in Hendricks. 7 P.3d at 291. The Court did note that in a previous case it had "declared that commitment under the Act was not

criminal or punitive and, therefore, does not violate the prohibition of ex post facto lawmaking", relying on Hendricks, 7 P.3d at 292. But it implied that applying the law to Mr. Crane, without a showing of absence of volitional control, might implicate a deterrent, or punitive purpose, and therefore the question of ex post facto was open.

The decision in Crane emphasizes the necessity of examining the actual implementation of the statute, and the importance of careful application of the statute on the issue of volitional control. It also underscores the significance of Justice Kennedy's concerns in Hendricks and supports the decision of the Court of Appeals in Mr. Young's case to remand for a hearing on the punitive nature of the law as applied to Mr. Young.

Conclusion

Mr. Young urges this Court to affirm the decision of the Court of Appeals.

Respectfully submitted this 12th day of October, 2000.

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